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BEFORE THE
ILLINOIS COMMERCE COMMISSION

ILLINOIS-AMERICAN WATER COMPANY) DOCKET NO.
) 09-0151
Approval of its annual)
reconciliation of purchased water)
and purchased sewage treatment)
surcharges pursuant to 83 Ill.)
Adm. Code 655.)

Springfield, Illinois
Wednesday, October 27, 2010

Met, pursuant to notice, at 2:00 p.m.

BEFORE:

MS. LISA TAPIA, Administrative Law Judge

APPEARANCES:

MR. JOHN J. REICHART
Corporate Counsel
727 Craig Road
St. Louis, Missouri 63141

(Appearing on behalf of
Illinois-American Water Company)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
CSR #084-002710

1		<u>I N D E X</u>			
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	(None)				
5					
6					
7					
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10					
11					
12					
13		<u>EXHIBITS</u>			
14					
15				<u>PRESENTED</u>	<u>ADMITTED</u>
16	(None)				
17					
18					
19					
20					
21					
22					

1 Village of Bolingbrook, Jeff Alperin of Tressler,
2 LLP, 305 West Briarcliff Road, Bolingbrook, Illinois
3 60440, phone number (630) 759-0800.

4 JUDGE TAPIA: Thank you. I will let the record
5 reflect that there are no others wishing to enter an
6 appearance. I will also let the record reflect that
7 Mr. Kerckhove is present at the hearing on behalf of
8 the Company and Mr. Atwood is here on behalf of
9 Staff.

10 I have called this hearing to allow
11 Illinois-American Water Company to reply orally for a
12 motion that was filed on October 22 by the People.
13 The motion is entitled the People of the State of
14 Illinois, Motion to Strike Portions of
15 Illinois-American Water Company Exhibit 1.0 SR and
16 2.0 SR. The Exhibit 1.0 SR is the surrebuttal
17 testimony of Rich Kerckhove and 2.0 SR is the
18 surrebuttal testimony of Kevin Hillen.

19 Before I pass it to Mr. Reichart to
20 respond to the motion, I would ask, Mr. Reichart, how
21 are you going to proceed? Are you going to cover
22 point by point Ms. Satter's motion or what's your

1 organization going to be?

2 MR. REICHART: My organization is going to be a
3 general response and then I am prepared to go point
4 by point after my opening remarks, if that is your
5 preference.

6 JUDGE TAPIA: Okay. When you are comfortable,
7 Mr. Reichart.

8 MR. REICHART: Thank you, Your Honor.

9 I would like to begin by providing
10 some background to put the issues that we will be
11 discussing today in context. As I am sure you are
12 aware, this is a purchased water reconciliation case
13 but it is somewhat unique in that in this case there
14 are two positions that are taken by either the Staff
15 or the Attorney General that have never been proposed
16 in an Illinois-American purchased water
17 reconciliation docket before. And obviously as a
18 result, there is testimony covering areas and issues
19 that you may not have seen previously in purchased
20 water reconciliation cases.

21 One of the first issues relates to a
22 proposal to require the company to begin tracking all

1 forms of unbilled authorized water consumption for a
2 period of time. That was a proposal made by Staff.
3 The second issue relates to a proposed adjustment to
4 disallow from recovery some or all of the excess
5 sewage flow charges that are paid to the City of
6 Elmhurst by the Company's Country Club District. And
7 now regarding this proposed adjustment, there is
8 significant discussion in the testimony of all
9 parties on the issue of inflow and infiltration or
10 I/I. If you have read the testimony, you have
11 probably seen that a lot.

12 I/I is directly related to the level
13 of excess sewer flow charges. Similarly, weather and
14 specifically heavy rainfall events directly impact
15 the level of I/I, as all the parties in this case
16 have testified to.

17 And, finally, the reasonableness of
18 the Company's management of I/I has also been
19 considered by the parties in conjunction with the
20 proposed adjustment.

21 I would note that the Administrative
22 Law Judge has broad discretion in admitting

1 information into the record, and I would refer you to
2 the Administrative Code Section 200.610 Subpart B
3 which reads, "In contested cases and licensing
4 proceedings, the rules of evidence and privilege
5 applied in civil cases in the circuit courts of the
6 state of Illinois shall be followed. However,
7 evidence not admissible under such rules may be
8 admitted if it is of a type commonly relied on by
9 reasonable prudent persons in the conduct of their
10 affairs."

11 As I will discuss further today, the
12 Company's testimony clearly meets this criteria.
13 Further, given the novelty of these new issues, the
14 information contained in the Company's testimony is
15 relevant and helpful to the Judge in assisting her
16 analyzing the informing and ultimately making her
17 decision.

18 Now, much of the Attorney General's
19 Motion to Strike is based on the premise that the
20 Company's testimony and exhibits relating to issues
21 impacting the Elmhurst water and sewage system are
22 irrelevant and/or beyond the scope of this docket.

1 In this regard the AG's motion is without merit. The
2 AG's primary witness in this case, Mr. Dennis
3 Streicher, was employed by the City of Elmhurst for
4 38 years and served as the City's director of water
5 and waste water. Subjects addressed in his testimony
6 include, but are not limited to, a review of
7 Illinois-American's actions in connection to Country
8 Club District's sewer collection system, assessment
9 of Illinois-American's handling of infiltration and
10 inflow issues, a discussion of how water used for
11 unbilled but authorized purposes was tracked or
12 monitored by the City of Elmhurst, a discussion of
13 footer drain issues for both Country Club and the
14 City of Elmhurst systems.

15 Regarding each of these issues, the
16 basis for Mr. Streicher's expertise is in fact his
17 almost 40 years experience in the Elmhurst water and
18 sewage department. Thus, the relevance of, one, the
19 Elmhurst system and, two, the practices of the water
20 and sewer department that Mr. Streicher ran are
21 apparent. When Mr. Streicher qualifies himself as an
22 expert and his expertise is based on his knowledge

1 and experience of the Elmhurst system, then the
2 Elmhurst system becomes relevant. In presenting his
3 experience running the Elmhurst system, he puts that
4 system into play for purposes of testimony, questions
5 and counter position.

6 It is the Company's position that it
7 is inappropriate for the AG witness to pick and
8 choose when it feels specific reference to Elmhurst
9 helps its case and then attempt to shield Elmhurst
10 information from the record when it may not help its
11 case. The information contained in the Company
12 witness testimony serves to provide a full and
13 complete record on which the Commission may assess
14 the positions, and in such cases novel positions, of
15 the parties.

16 For these reasons and the reasons I
17 will discuss further as we go through point by point,
18 Illinois-American respectfully requests that the AG's
19 motion be denied. And, again, with that background I
20 am prepared if you think it is efficient to go
21 through -- I guess I can use the chart that the
22 Attorney General Satter, Assistant Attorney General

1 Satter, attached to her motion and we can discuss the
2 testimony.

3 JUDGE TAPIA: Go ahead.

4 MR. REICHART: So her first reference is the
5 surrebuttal of Company witness Kerckhove, and I think
6 we can probably combine the first two references.
7 The first is a very brief reference on pages 14 and
8 15. And the second reference at least in the
9 narrative follows later on page 15 and goes through
10 page 17.

11 Judge, do you think it is helpful to
12 give an opportunity to individuals to read this or
13 have you read the information already?

14 JUDGE TAPIA: Ms. Satter?

15 MS. SATTER: Because this is a response, would
16 it be helpful if I did what's customarily done in a
17 motion where I would present what's being requested
18 and then Mr. Reichart could respond? I just think it
19 might provide some context because it is a little
20 hard, I think, to respond to something that we think
21 is in everybody's head but we don't know.

22 JUDGE TAPIA: Actually, I think that would be

1 very helpful, and actually it would be helpful for me
2 when I refer back to the transcript because I am
3 going to wait for my ruling after I review the
4 transcript or the oral argument and response today.

5 So, Mr. Reichart, are you okay with
6 that, for Ms. Satter to basically cover her points
7 and then you can respond? Is it going to be point by
8 point, Ms. Satter, or is it going to be all the
9 points and then handing it over to Mr. Reichart.

10 MS. SATTER: I am open, however you want to
11 proceed. If you would like to start with --
12 basically there are three, I think there are three
13 issues. The one is whether the surrebuttal testimony
14 was within the scope of Mr. Reichart's testimony.
15 The second is whether the discussion of the July 2010
16 events is even relevant and has any basis for
17 consideration in this case. And the third issue has
18 to do with the data requests, should that package of
19 data request responses be admitted. Those are the
20 three issues relative to Mr. Reichart.

21 There are similar parallel issues
22 relative to Mr. Hillen. So we can -- I think it

1 probably makes more sense to do one witness and then
2 the other, even though there are parallels. I mean,
3 we don't want to repeat ourselves, and in the motion
4 I tried not to do that. But at least we will know
5 where we stand. If we try to refer to two separate
6 pieces of testimony at the same time, I think it will
7 be confusing.

8 JUDGE TAPIA: Mr. Reichart, what's your
9 thoughts?

10 MR. REICHART: I don't have a problem with
11 that. My only reluctance is, Sue, you are not
12 anticipating making any new arguments that you didn't
13 make in your motion here? I mean, that is what I am
14 prepared to respond to.

15 MS. SATTER: Right. I am going to listen to
16 what you say and, of course, I will respond. But the
17 principals are here. And really my main question is,
18 do you want to go to each of these three one by one
19 steps? Okay. The first one is I maintain it is
20 beyond the scope of our rebuttal testimony. This is
21 what. And then he responds and then I will reply.
22 And then the next one is relevancy.

1 JUDGE TAPIA: I want to make it as clear and
2 concise as possible for the record. So I think
3 that's a good plan, but Mr. Reichart I am willing
4 to --

5 MR. REICHART: I think I am willing to try
6 that. I did organize my testimony in a certain way,
7 so I will try not to be repetitive, too, but in some
8 cases similar arguments apply to the same section.
9 But we can try to work our way through that then.

10 JUDGE TAPIA: So, Ms. Satter, will you -- okay,
11 I will hand it to you, Ms. Satter.

12 MS. SATTER: The Office of the Attorney General
13 filed this motion to strike portions of the
14 surrebuttal testimony of two Illinois-American
15 witnesses. We did not address direct, supplemental
16 direct or rebuttal. This is only surrebuttal
17 testimony.

18 So the first section, the first
19 subject, has to do with whether or not Mr. Kerckhove
20 appropriately assumed that Mr. Reichart compared the
21 Elmhurst system, the operation of the Elmhurst
22 system, to the operation of the Illinois-American

1 system.

2 MR. REICHART: Sue, I don't mean to interrupt
3 you. Just to correct the record, Mr. Streicher,
4 right? You said Mr. Reichart.

5 MS. SATTER: Oh, my gosh. You didn't hear
6 that. Sorry. I accept that correction. Streicher,
7 Reichart. Streicher, okay.

8 Did he make this wholesale comparison
9 that would then open the door to talking about
10 whatever was happening with the Elmhurst system, and
11 we maintain that he didn't. I went back and I read
12 the testimony of Mr. Streicher to see what did he
13 talk about. And as I indicated in my motion, he
14 talked about two very specific things, one being the
15 unbilled but authorized consumption, how that is
16 treated, and also how you treat private I/I, what
17 programs Elmhurst used for private I/I.

18 Also, on page 76 he says there is an
19 agreement between Elmhurst and Illinois-American.
20 Now, I did go back and look at it a little more
21 closely again, and on the next page, which
22 Mr. Kerckhove didn't cite, Mr. Streicher says when

1 there is little or no rain or precipitation, the
2 sources of I/I will be limited and he says one would
3 not expect I/I from those sources to be significant.
4 But he does say a system, any system, should be
5 maintained so it can handle significant rain and
6 other runoff events without overloading the treatment
7 plant with extraneous water. That's on page 6, lines
8 92 to 98.

9 There is not a reference to the City
10 of Elmhurst. He is not comparing it to the City of
11 Elmhurst. He is saying from his years of experience
12 in the industry this is what should be manageable.

13 So I think that, you know, the Company
14 is then jumping from that in surrebuttal to say, oh,
15 there is a wholesale comparison, so now I am going to
16 talk about anything that I want on the City of
17 Elmhurst, and we think that that's inappropriate.

18 The City of Elmhurst is not subject to
19 these proceedings. Mr. Reichart is free to ask
20 Mr. Streicher anything he wants on cross examination
21 within the scope of Mr. Streicher's testimony. But
22 to at surrebuttal bring in things that were not

1 addressed, there was no wholesale comparison made.
2 That's prejudicial to us and it violates the rules.
3 So that's the first problem.

4 The second problem is this discussion
5 of the July 2010 rainfall. This is a 2008
6 reconciliation having to do with Country Club
7 District of Illinois-American's system. How a
8 rainfall in July of 2010 in another part of the area,
9 that's not even their system, is relevant is beyond
10 me. That event happened after -- excuse me, that
11 event was not mentioned by Mr. Streicher in his
12 surrebuttal testimony. He didn't mention any
13 specific events like that. And for the Company to
14 then turn around and introduce something like this is
15 beyond the scope.

16 But there is other problems with this.
17 We don't know enough about this July 2010 rain and
18 flooding to really know how comparable it is. And
19 Mr. Reichart -- excuse me, Mr. Kerckhove attaches all
20 kinds of what we consider hearsay documents to his
21 testimony, and then he proceeds to take issue with
22 what's stated in these hearsay documents which you

1 can see on page 17, line 384, where he says, "I
2 believe that Alderman Leader cited the storm water
3 system in error for this remark." Well, whom am I
4 going to ask whether Alderman Leader made a correct
5 statement or incorrect statement, whether he was in
6 error or not. This is classic hearsay and it
7 prejudices the People.

8 So those are the reasons why we think,
9 in addition to the reasons that are stated in our
10 motion, why this particular reference to this July
11 2010 event should be excluded. Of course, there is
12 just the notion that it is late. How could something
13 that happened in July of 2010 have influenced what
14 Illinois-American did in 2008? And there is the
15 other side of the ball that says but that's not a
16 consideration.

17 JUDGE TAPIA: Mr. Reichart?

18 MR. REICHART: I am ready to respond. My first
19 response to the first comment of whether or not
20 Mr. Streicher opened the door for analysis of the
21 Elmhurst system is he definitely did. As I said
22 before, the entire basis for his expertise is his

1 almost 40 years with the Elmhurst system. Thus, when
2 he -- and he does this a lot in his testimony. He
3 will either give an example of what goes on in
4 Elmhurst or a well-run system when critiquing and
5 criticizing actions on the part of the company. He
6 begins this -- yes, he does begin this in direct
7 testimony. But the tact begins in direct and
8 continues through his rebuttal.

9 Some examples, on page 11 of his
10 direct Mr. Streicher states that in his experience a
11 well-run system will conduct inspections and repairs
12 on a ten-year cycle. He then indicates that Elmhurst
13 is on a seven-year cycle for that. So he indicates
14 what a well-run system does and in his very next
15 sentence he is talking about Elmhurst.

16 On page 15 he criticizes the Company's
17 actions regarding private source inflow, and then
18 indicates how the City of Elmhurst adopted a program
19 to address the same program.

20 In his rebuttal testimony in response
21 to statements regarding the difficulties in tracking
22 unbilled consumption, he describes Elmhurst's

1 practice for tracking or monitoring unbilled
2 authorized consumption.

3 The most glaring one in my mind is the
4 very same one that Ms. Satter spoke to. If you look
5 at page 6 of his rebuttal testimony, I am going to
6 give you the full quote, when discussing I/I and the
7 weather impact on I/I, he states, "Rainfall and other
8 precipitation are the majors sources of I/I and those
9 are exactly the sources that a well-maintained system
10 should be able to moderate and control. As I have
11 mentioned, I do not expect to keep I/I out of the
12 sewer collection system, but it should be maintained
13 so it can handle significant rain and other runoff
14 events without overloading the treatment plant with
15 extraneous water." This statement is a clear link to
16 the Elmhurst experience with I/I.

17 If you recall, Your Honor, that the AG
18 is calling for a major disallowance in this case
19 based in large part on Mr. Striker's critique of the
20 Company's handling of I/I issues. In fact,
21 immediately prior to this discussion in
22 Mr. Streicher's testimony, he does provide

1 information on what he thinks is the appropriate or
2 reasonable level of I/I as it pertains to the
3 Elmhurst system.

4 Mr. Kerckhove's testimony in this case
5 takes Mr. Streicher's criteria and applies publicly
6 available information from Mr. Streicher's system to
7 it. The point is here that, despite Mr. Streicher's
8 testimony, in even the best run systems
9 uncontrollable weather will impact I/I, and
10 Mr. Kerckhove's testimony is responsive to
11 Mr. Streicher and appropriate and useful to the
12 Commission in considering the support for the
13 adjustment that the AG proposes.

14 Now, I don't disagree with the case
15 law that Ms. Satter pointed to regarding what
16 criteria should be used in measuring or considering
17 the prudence of the Company for decisions it made in
18 2008. There is no argument there. I believe the
19 Company should be judged -- their decisions and a
20 ruling on the prudence of the Company should be based
21 on what the Company knew at that time. The fact of
22 the matter is we are some two years later, two years

1 after the 2008 reconciliation period or the year that
2 we are reconciling, and Mr. Streicher's testimony
3 critiquing the Company's choices on I/I and his
4 testimony about what a well-run system could have or
5 should have done comes into play here in 2010.

6 I do not believe the same prudence
7 criteria applies to Mr. Streicher. We are not
8 judging Mr. Streicher's decision based on prudence.
9 What we are simply doing here is taking something
10 that he said and taking information available as he
11 said it in recent testimony in the year 2000 and
12 taking information, publicly available information,
13 about an event that is current and using that and
14 providing that to the Commission so the Commission
15 can critique or analyze or weigh whether or not they
16 think that Mr. Streicher's criteria is reasonable.

17 The other point I want to make about
18 the information that we used, first of all, the
19 reference to -- the information we used, there is
20 several different types. There are newspaper
21 articles and that is in fact true, and this is 1.11
22 Attachment. These are newspaper articles. It is the

1 type of information that would clearly fall under
2 Part 200.610 of the Commission's Rules of Practice.
3 The information contained in these articles was
4 publicly available. And I also want to note this,
5 Mr. Streicher himself attached several newspaper
6 articles to his rebuttal testimony, Exhibit 3.1. And
7 I would note that two of those articles that he
8 attached are from the Chicago Tribune, the very same
9 newspaper that we attached articles from. So this
10 idea that Mr. Streicher should be able to attach
11 newspaper articles and we should not, I think is
12 difficult for us.

13 The second and probably the more --
14 well, the second point is that another attachment was
15 1.12 SR and that was -- I am going to pull it because
16 it was a long or a large amount of information. Let
17 me go back. 1.11, you should have this, Judge. If
18 you do, read it. It is articles about the rainfall
19 event. It refers specifically to the City of
20 Elmhurst. It is not unlike the information that
21 Mr. Streicher refers to in his testimony to support
22 positions he takes.

1 Regarding 1.12 SR, and this is again a
2 larger attachment of information that comes directly
3 from the City of Elmhurst website. Now, again, I
4 want to point out that Mr. Streicher in his rebuttal
5 testimony -- let me get the proper cite here -- in
6 his rebuttal testimony when citing sources of
7 information that are supportive of his position, I am
8 looking at page 8, beginning on line 157, he talks
9 about a particular program that the City of Elmhurst
10 has in place. He says, "There is information
11 available from the City on its website and materials
12 available from the Public Works Department (see
13 <http://www.elmhurst.org>." He gives the Elmhurst city
14 website and then he goes on to discuss the remainder
15 of his point.

16 But my point is, he saw fit to
17 reference his own website and I do -- I have no
18 reason to doubt the information that he cites to is
19 not correct. But he is referring to information from
20 a city website that is in our mind -- well, we
21 provided it, it is what it is. We did not redact any
22 portion of it. This four piece attachment was one

1 large pdf. We had to break it up into fours just to
2 be able to file it on the e-Docket system.

3 But this information was provided by
4 the City of Elmhurst, the very city that he was the
5 water manager of and on which his expertise is based.
6 And we do think it is extremely relevant and it is
7 the type of information that is admissible pursuant
8 to the Commission's rules that I referred to before,
9 and this information is helpful for the Commission to
10 be able to weigh the criteria and criticisms that
11 Mr. Streicher is using in support of his proposed
12 adjustment in this case.

13 I think I can stop there on that
14 attachment. I am just trying to look at the other
15 issues. So, you know, I think in response to what
16 Ms. Satter just argued, there is a clear link to
17 Mr. Streicher's testimony simply because
18 Mr. Streicher is holding himself out as an expert and
19 we know where his expertise comes from, the City of
20 Elmhurst. When he indicates or criticizes the
21 Company or indicates what a well-run water system
22 should be doing, I think we are able -- we should be

1 able to obtain information, publicly available
2 information, information from a website that he cited
3 throughout his testimony previously, and present that
4 to the Commission to allow them to assess the weight
5 that should be given to certain statements that
6 Mr. Streicher has made. That is the relevance link.

7 And, again, the prudence question, I
8 believe Ms. Satter's arguments are misplaced. The
9 prudence, the question of what did Illinois-American
10 know at the time that it engaged in certain
11 discussions in 2008, I agree; we should only use
12 information that Illinois-American knew. We are
13 talking about something else. Mr. Streicher is not
14 being critiqued for his prudence in this case, but he
15 is making an argument that goes to -- and in that
16 argument he is supporting his feelings on whether or
17 not the Company appropriately managed the I/I, and I
18 think that we should have the opportunity to provide
19 this information that I think is relevant to his
20 experience and in some cases may be additional
21 information that may not be entirely consistent with
22 some of the statements that he makes in absolutes in

1 his testimony.

2 MS. SATTER: I think that what Mr. Reichart is
3 trying to do is to go back to Mr. Streicher's direct
4 testimony and say, oh, this man's expertise comes
5 from his experience in the city, so now it is
6 surrebuttal so he doesn't have an opportunity to
7 respond, going to throw all this stuff in there. And
8 I think that's prejudicial and it is not fair. If
9 this goes to credibility, which is what I am hearing
10 Mr. Reichart say, then he has the right to ask him
11 these questions directly, where then the question of
12 relevance will be addressed then, but he doesn't have
13 the right to introduce extraneous evidence on
14 credibility. Now, there are rules of evidence that
15 address to what extent evidence can be admitted on
16 credibility per se.

17 Maybe if this were on rebuttal and
18 there were time to respond. We don't have -- we have
19 a different system. We have things in writing as
20 opposed to doing everything live. Part of the reason
21 for that is so that you can narrow issues and things
22 can be addressed in an orderly way. But to come in

1 at surrebuttal and say, well, you were employed by
2 the City of Elmhurst so everything that has anything
3 to do with the City of Elmhurst is fair game, expands
4 things way beyond anything you should expect on
5 surrebuttal, and that's prejudicial.

6 Secondly, though, the specific events
7 that are discussed and that these newspaper articles
8 refer to is a rainfall from July of 2010. You know,
9 these are newspaper reports. We don't know are these
10 storm systems, sanitary systems, combined storm
11 systems/sanitary systems, where was the flooding,
12 what happened. I mean, this is a newspaper article
13 saying there was a request for federal disaster
14 relief. I mean, what does this have to do with what
15 Illinois-American did in maintaining its I/I system
16 and incurring enough penalties to more than double
17 consumer's bills. And that's after that penalty has
18 been amortized over three years.

19 That's what we are talking about in
20 this case. We are not talking about some rain that
21 happened a couple of months ago that caused flooding
22 and we don't know what's this flooding about. Was

1 the flooding because the ground didn't absorb the
2 water or was the flooding because it came up from the
3 sewer? We don't know. So this is -- these newspaper
4 articles are just that. They are not directly
5 grounded to any particular issue in this case, and
6 the memorandum about excessive rainfall, the status
7 of various topics, I mean, talking about taking a big
8 subject, throwing it against the wall, maybe we will
9 find something that's relevant.

10 I mean, this is surrebuttal. How are
11 we narrowing the issues? Mr. Reichart says, well,
12 the People attached newspaper articles, and that's
13 true. And the article that we attached was very
14 short and it said in 1988 Elmhurst started the system
15 to address private I/I. Directly relevant to an
16 issue in this case which is the handling of private
17 I/I, an issue that the Company put out there as a
18 defense.

19 So to compare an article or a website
20 dealing directly with the program that the Company
21 has put at issue in this case, that is how to handle
22 private I/I, that the Company itself testified is

1 practically impossible, they are between a rock and a
2 hard place, they don't know what to do, so we
3 submitted very specific discussion. Okay, this is
4 what Elmhurst has done. That is not the same as this
5 kind of broad stroke. Anything that has anything to
6 do with the City of Elmhurst and water is, therefore,
7 relevant on surrebuttal.

8 So I think because -- there are
9 obviously scope issues, relevance issues, but if
10 Mr. Reichart believes that these things are relevant
11 for credibility, then they are not appropriate for
12 surrebuttal testimony. He didn't ask Mr. Streicher
13 questions when it was a live question and answer. He
14 would have answered the questions. But to put
15 newspaper articles in to kind of put words in his
16 mouth, I think that's totally inappropriate and I
17 don't think that reasonable people would rely on that
18 pursuant to the rule.

19 MR. REICHART: Your Honor, first of all, in
20 reference to waiting 'til surrebuttal to provide
21 this, the rain event happened in late July. If you
22 look at the memo on the website, this is a memo from

1 August 3 of 2010. It obviously was after that when
2 we first became aware of this document. So it wasn't
3 like we were waiting in the weeds about this. So I
4 just want to make that clear. We weren't waiting
5 until the end of the day to provide this.

6 But the rain event, and quite frankly
7 I don't think that the timing of this matter is --
8 the fact of the matter is, and it just kind of goes
9 to the point we are trying to make, we don't know
10 when rain events will occur. But Mr. Streicher in
11 his testimony, the reference on page 6 that I
12 provided, talks about the impact of rain events on
13 well-maintained systems and what well-maintained
14 systems should be able to do. This information is
15 directly responsive to that and it is not something
16 that is simply to credibility. There is specific
17 information in here about I/I issues that resulted
18 from the rain event from Elmhurst. And based on the
19 information provided, part of the narrative that is
20 being attempted to be stricken related to this, in
21 that narrative Mr. Kerckhove attempts to do an
22 analysis based on specific number and assessment of

1 reasonable level of I/I that Mr. Streicher provides a
2 few questions earlier and compare that to I/I numbers
3 that are relevant that come out of this attachment
4 that again is provided publicly on the City of
5 Elmhurst's website. You know, it is not -- I don't
6 know what more to say. It is a public document
7 prepared and sent out by the municipality that
8 Mr. Streicher worked for for almost 40 years.

9 MS. SATTER: The only comment that I would have
10 is that if there were -- there isn't even a
11 comparison in the record that would enable you to say
12 this is a rain event that equals a rain event in
13 2008. That was not a link that was made. And even
14 if it were, I think that it is irrelevant. It is a
15 different system. There hasn't been a showing of
16 comparability. The time frame is obviously
17 different. We don't even know what kind of flooding
18 took place. So we maintain that that testimony
19 should be stricken.

20 MR. REICHART: If I may, Your Honor, one more
21 point on this and it goes to the access to
22 information. And I know we will be talking about

1 this later. There is some -- one of the items that
2 we will be discussing, I am sure, are the third set
3 of data request responses for the Attorney General's
4 responses to the Company's third set of data
5 requests. And, you know, those were included.
6 Without getting into too much detail, every single
7 one of these data requests were objected to. In many
8 cases there was, subject to the objections, there was
9 some narrative provided but there wasn't a lot in the
10 way of documents and numbers.

11 That said and for what it is worth,
12 the fourth set of data requests that we asked them
13 were also objected -- every single data request was
14 objected to as well.

15 MS. SATTER: Okay, I --

16 MR. REICHART: Wait.

17 MS. SATTER: Are we talking about the Motion to
18 Strike?

19 MR. REICHART: Yes, this goes to the Motion to
20 Strike.

21 MS. SATTER: Or are we talking about general
22 concerns that they don't like my responses?

1 MR. REICHART: What I am saying is at times in
2 the objections, of the many objections set forth, the
3 AG would indicate that part of the reason for the
4 objection was that it seeks documents or information
5 that by reason of filing with public agencies or
6 otherwise are in the public domain or otherwise
7 publicly accessible. It was very difficult to get
8 anything in the way of responsive usable information
9 from Mr. Streicher.

10 I think this objection directed us to
11 go out to try to seek publicly available information.
12 I think, again, the Elmhurst information and the news
13 articles are just that. They are publicly available
14 information. They are not something we manufactured.
15 They are what they are. Anyone can go to their
16 website and confirm that this is exactly the way this
17 information was presented on a particular date. And
18 I think just big picture wise, the fact that the
19 objections, you know, basically -- some of the
20 objections basically indicate to us that we should
21 seek documents that are publicly available or
22 otherwise in the public domain supports the position

1 that we have been in in this case in trying to get
2 information about Mr. Streicher so we can use it and
3 test and be responsive to some of the criteria and
4 critiques that he has been making about expectations
5 on the maintenance of I/I on a well-run system.

6 JUDGE TAPIA: Ms. Satter.

7 MS. SATTER: I think that this really leads us
8 to the next substantive area. Well, there was
9 actually one in between, before we go to the data
10 request responses. Although I will note that the
11 Company is always free to use publicly available
12 information just like anybody else. I don't think
13 that it really should matter whether in responses we
14 say you are free to use publicly available
15 information. It is kind of an irrelevant concern.

16 In any event, the other -- the next
17 section that we asked to strike is a discussion at
18 pages 18 and 19 of Mr. Kerckhove's testimony where he
19 talks about additional Company actions in connection
20 with these, what they call, unauthorized connections
21 to the sewer system. And we have moved to strike
22 discussions that Mr. Kerckhove puts on the record

1 having to do with telephone calls between
2 Illinois-American and attorneys for other parties.
3 It just seems irrelevant.

4 If you were to just read this
5 testimony, you have no idea when these discussions
6 take place. Did these discussions take place at the
7 end of 2007? Did these discussions take place in
8 2008 when there was an effort to deal with this
9 problem? When did these discussions happen, number
10 one. And, number two, what was the purpose of the
11 discussions.

12 The only thing that's relevant in this
13 case is what did the Company do to address I/I,
14 whether it is private I/I or public I/I. And I
15 just -- a reference to a discussion that
16 Illinois-American requested to have with parties is,
17 number one, irrelevant, and, number two, it is
18 irrelevant under the rule that discussions that have
19 to do with settlement, which they appear to be or
20 they are discussions among attorneys, are not the
21 subject of testimony. They don't get us anywhere.
22 They are objectionable under the law. They are

1 settlement discussions. They are not appropriately
2 described, so they don't really put you in the right
3 context so you know when they took place or what they
4 were about. And they should not be part of this
5 testimony. They are not competent testimony and they
6 should be stricken.

7 MR. REICHART: Your Honor, in response to that
8 I would first like to point just by way of background
9 to page 7 of Mr. Streicher's rebuttal testimony,
10 lines 125. Well, actually the whole page, the whole
11 question, but line 25 in particular. In discussing
12 remediated steps for footer or how to deal with a
13 footer, unauthorized footer tile connections, he
14 discusses in his testimony several things. He is
15 critical of the Company in their approach. He talks
16 about what Elmhurst has done, again referring to
17 Elmhurst, the municipality that he works with, what
18 they have done to deal with the problem or attempt to
19 deal with the problem, and he also indicates,
20 "Illinois-American must embark on a major education
21 program to inform residents about why they should
22 take action to correct the problem on their property.

1 At the same time residents need the confidence that
2 the Company is doing all they can to reduce I/I
3 flows," and it goes on from there.

4 Our conversations with the parties,
5 the referenced conversations -- and I agree, we did
6 not get into specifics, we did not talk about if
7 there were settlement proposals made or any
8 objections made or anything like this. But in
9 response to these concerns that are articulated in
10 the testimony itself and just general concerns that
11 were articulated, we did embark in an educational
12 program. We informed the other parties and attempted
13 to let them know that we were attempting to address
14 this question and to elicit feedback and input.

15 And the reason for that was this issue
16 has come up for the first time in 2008. We are in
17 2010. However this issue is dealt with, it is going
18 to be in front of us again when we do the
19 reconciliation in 2009 and the reconciliation for
20 this year and, depending on how we go, it will
21 continue moving forward. We thought it would be
22 efficient for us to get together with the parties who

1 have issues with this and see if we could come up to
2 an agreed-to approach. I am not going to speak to
3 any position taken by any party in that, but I think
4 it is notable for the Company -- or for the
5 Commission to know that we did engage in a program,
6 we did inform the other parties of what we were
7 doing. If we could get insight or advice on their
8 thoughts on it, we certainly were willing to take it.

9 As a matter of fact, as a result of --
10 we have mentioned in our testimony, in rebuttal
11 testimony, that we were holding certain meetings and
12 different things like that. And on that basis the
13 Attorney General did ask the DR for documents and
14 other materials that were provided to the customers
15 pertaining to this educational program. They were
16 attached to Mr. Hillen's testimony but are subject of
17 the Attorney General's Motion to Strike.

18 This information we think is clearly
19 relevant to this case and is definitely something
20 that the Commission would want to be aware of so they
21 could review and perhaps they could provide input on
22 whether or not they think what we are doing is right

1 or if they have some other suggestions.

2 Again, the interest here is that we
3 can listen to what the other ideas are and hopefully
4 implement or respond or come to some type of
5 agreed-to approach that the Commission will be
6 satisfied with so we are not dealing with this in the
7 next 2009 reconciliation case which is waiting for
8 this one to be resolved so we can proceed forward.

9 Unfortunately, the nature of
10 reconciliation cases is that the parties come
11 together and look back on what the Company did in a
12 year prior and assess whether or not they acted
13 prudently. We are trying to act prudently right now
14 in coming to an agreement and getting an agreed-to
15 approach if we could, so this issue is not an issue
16 in the future cases.

17 Again, it is responsive to issues
18 raised by Mr. Streicher in his testimony.

19 JUDGE TAPIA: Ms. Satter.

20 MS. SATTER: I think that Mr. Reichart has
21 betrayed a lot of confusion about the scope of this
22 proceeding, about the purpose of this proceeding, in

1 his comments. This is a reconciliation of a
2 particular period of time, the year 2000, were the
3 actions of the Company prudent during that period of
4 time. I don't think that there is much question but
5 that there was no private I/I program in place in
6 2008. As a result of discovery that we conducted on
7 direct testimony we were able to determine that when
8 the Company talked, when Mr. Kerckhove talked, about
9 private I/I programs with moneys being available,
10 that those programs hadn't even begun when he
11 testified to them in his direct.

12 There is a real time frame issue here.
13 And I think that Mr. Reichart's comments show that
14 the Company is not being clear about what events
15 happened during what relevant time periods. I mean,
16 it might be fine. In fact, it is important for the
17 Company to address private I/I, public I/I, customer
18 education, all of those things. Those are all
19 important items. But are they relevant to this
20 reconciliation case in 2008? I say they are not.
21 What's relevant to this reconciliation is what
22 happened in 2000 -- up to the end of 2008. What did

1 the Company do and what did they not?

2 Now, as far as what they did

3 afterwards, hey, that's fine, great. You know, do as

4 much as you possibly can. If you want to talk to me,

5 you can talk to me. If you want to talk to somebody

6 else, talk to whoever you want. But that doesn't

7 make it relevant in this case. And if it is intended

8 to give you the impression that the Company is

9 trying, that they are good guys, I submit that's

10 inappropriate. That's not what this case is about.

11 That's not a factual issue.

12 And as I mentioned before, the law

13 provides that discussions that have to do with

14 settlement or resolution of disputes is generally not

15 considered relevant to the underlying case because

16 that can cast, you know, not aspersions, but you can

17 cast doubt. Well, why didn't you agree, well, what

18 did you suggest or was this your idea or was it that

19 idea, all kinds of issues that are really irrelevant.

20 So what the Company has done two

21 years, two and a half years after, only after we

22 raised the problem, brought it to their attention,

1 really should not be a consideration in this
2 reconciliation.

3 MR. REICHART: Your Honor, building on
4 Ms. Satter's point, the fact of the matter is the
5 first time that this adjustment was proposed or an
6 adjustment was proposed and a recommendation that any
7 party took a position regarding the need for an
8 education program was in testimony provided in this
9 case. We are being responsive to testimony provided
10 now.

11 I agree, you know, the information we
12 should -- the prudence of the Company's actions back
13 in 2008 should be limited to what they knew in 2008.
14 There was no history of anyone proposing an
15 adjustment such as this in 2008. We are being
16 responsive to a suggestion and testimony of the AG's
17 witness, and I believe the Staff witness may -- I
18 don't recall, but I think they may have asked
19 questions about it or spoken to it as well in
20 testimony. But we are trying to be responsive to an
21 issue raised.

22 As I said before, the unfortunate

1 reality here is this testimony about -- this
2 testimony that Mr. Streicher provides in 2010 is
3 attempting to critique actions that we took in 2008.
4 We are trying to be responsive to that now to the
5 extent the other parties share that concern. But it
6 is not something that was in front of us or it is not
7 a position that was taken by any party that we knew
8 of in 2008.

9 MS. SATTER: Just for the record, I think I
10 mentioned that Mr. Kerckhove had raised the question
11 about this program, private I/I program, the grant
12 and loan program. It is in the Exhibit Number 1 sub
13 at page 7 and that's where it was first discussed.
14 At that point there was no time frame discussed.

15 Okay. The final issue in regards to
16 Mr. Kerckhove's testimony is that we have asked that
17 the discussion that he has in his testimony about
18 responses to data requests be stricken. Basically,
19 if Mr. Reichart and the Company felt there were
20 problems with our responses, they could have, number
21 one, called us under the rules and they could have
22 followed up that way because the rules do require

1 that if there is a discovery dispute, that parties
2 bring it to a discussion. Number 2, if he was
3 unhappy, he could have filed a Motion to Compel.

4 And, number 3, we didn't answer the
5 questions. We objected because we thought it was
6 beyond the scope. That is our right; that is my
7 duty. What we stated, without waiving foregoing
8 objections, we respond as follows.

9 It doesn't matter. Ultimately, it
10 doesn't matter. Discovery disputes are not the
11 subject of testimony. If they needed this
12 information and they thought we had it -- I mean, we
13 provided what we had. Mr. Streicher is not an
14 employee of the City of Elmhurst. He is retired.
15 The information that they thought he had he doesn't
16 have. We provided what he has. If they are not
17 happy with it, I am sorry, they can ask him whatever
18 they want on cross examination.

19 But to put in testimony that we are
20 unhappy with your data request responses, you were
21 really -- you objected too much and now we are going
22 to put them all in there anyway because we don't know

1 what to do them. That's not testimony. That's not
2 evidence. It is cluttering the record. I mean, the
3 surrebuttal just as a visual, the surrebuttal is like
4 this (indicating). This is like two inches versus an
5 inch for everything else.

6 Number one, it is not evidence to just
7 say we are not happy with data responses and, number
8 two, they didn't tie it to anything. Why is this
9 relevant? Well, because we weren't happy with it.
10 And it is too late. Surrebuttal is not the time to
11 just dump wholesale stuff into the record because you
12 don't know what else to do with it. So we think it
13 should be stricken as we stated in our motion.

14 MR. REICHART: Your Honor, we did not include
15 data request responses prior to immediately before
16 our surrebuttal testimony. Let me take a step back.

17 The data request responses that we
18 provided, the third set we asked in response to the
19 rebuttal testimony of the AG witnesses, so it is
20 later in the day. We didn't dump anything. In
21 addition, there was another set of data requests that
22 we asked based on the rebuttal testimony of the AG

1 that they objected to everything; we did not include
2 that.

3 But the point of this is, this case
4 has gone on for a lot longer than anyone had
5 anticipated. The DRs that we provided in a timely
6 fashion after the rebuttal testimony of the parties
7 came out took us time to get the responses from the
8 Company or I am not saying they took any more than
9 they needed to or were allowed, but they took the
10 time allotted to them to respond to the DRs.

11 We received some DRs on, I believe,
12 Friday the 24th which effectively -- it was in the
13 afternoon which effectively made it the following
14 Monday of September. And the second set I believe we
15 received on September 28. Our testimony was due, I
16 believe, on the 12th or 13th of October. Based on
17 the responses that we saw, we determined that -- and
18 I did ask if there would be any changes to the
19 narratives. I mean, there was a phone call. There
20 was a discussion, Sue, if you recall, about whether
21 or not this was the end result or whether or not you
22 were withholding anything based on your objection.

1 You said your answers were your answers.

2 Based on that information I did not
3 believe that filing a motion would be an efficient
4 use of time. We had two weeks essentially to go
5 through the testimony and put together our responsive
6 testimony and keep with the schedule because this
7 case had been going on. So, again, could we have
8 filed a motion to compel? Perhaps we could have, but
9 we made the call that we didn't think that that would
10 change very much or we weren't going to get any more
11 answers that would help us meet our filing deadline
12 for the hearing. At the time we had testimony due.
13 We had a hearing date proposed.

14 And, you know, based on these
15 responses we did go out and seek information from the
16 website that was cited to by Mr. Streicher earlier in
17 his testimony. And we did find relevant -- we did
18 find, we feel, information that Mr. Streicher would
19 like have said he did not have possession of because
20 he discontinued his work with the City of Elmhurst in
21 May of this year, I believe, or earlier in the year.

22 JUDGE TAPIA: Thank you, Mr. Reichart.

1 Anything else, Ms. Satter, before we --

2 MS. SATTER: No, I think that that issue is
3 addressed. Now, there is similar requests to strike
4 relative to Mr. Hillen's testimony. And maybe just
5 to go through the motion, on pages 2 through 7
6 Mr. Hillen talks about post-2008 actions to address
7 private I/I. And it just -- these are -- let me make
8 sure I have got the correct citations here.

9 Yeah, okay. Beginning on page 4, line
10 80, again like Mr. Kerckhove, and it is kind of
11 repetitive of Mr. Kerckhove's, actually, he talks
12 about things that happened in 2009 and what the
13 Company thought they would do to the grant and loan
14 program. The grant and loan program, as it turned
15 out, did not even begin until July 2010 which he
16 talks about. He attaches the information that he
17 submitted that he distributed to consumers two and a
18 half years after 2008. All of this is really beyond
19 the scope of this docket. So we have asked to strike
20 that discussion which includes the grant and loan
21 program, what the Company did in the last quarter of
22 2010 about illegal connections and, in addition, the

1 Exhibits 2.04 SR, 2.05 SR and 2.06 SR which are
2 materials that the Company delivered to residents.
3 How is that relevant to what happened in 2008 is
4 really unclear and was really never tied up. So we
5 would ask that that be stricken.

6 MR. REICHART: Again, I have similar responses
7 to this issue. Ms. Satter is right; it is similar to
8 some of the discussion we have already had on
9 Mr. Kerckhove's testimony. The specific reference to
10 the educational information I believe is relevant for
11 the very same reasons I said before; Mr. Streicher
12 references the need for an educational program, and
13 we do think that the Commission would have interest
14 in that and would potentially want to comment on
15 that.

16 This idea that nothing beyond the end
17 of 2008 should be used or relevant, again I want to
18 go back to the IP case that Ms. Satter cited to
19 earlier. I don't disagree that the Company's actions
20 or the prudence of the Company's actions should be
21 judged in 2008 based on the information that the
22 Company had in 2008. No argument there. The fact of

1 the matter is, on a lot of the other issues that are
2 being discussed in this case, there are many
3 occasions where witnesses for both the Attorney
4 General and Staff reference post-2008 information.

5 Mr. Streicher in page 7 of his
6 rebuttal testimony references the 2009 SSE study and,
7 as a matter of fact, attaches that study as an
8 attachment to his testimony. Mr. Atwood also
9 references the 2009 SSE in his rebuttal testimony on
10 page 9. He also references invoices for 2008, 2009,
11 2010 that he reviewed, and that reference is on page
12 8 of his rebuttal testimony.

13 As a matter of fact, if we go back to
14 the original hearing that we had in this case, I
15 believe back in February of 2009, that's a long time
16 ago -- December, I am sorry, December of 2009,
17 Ms. Satter herself during cross examination,
18 transcript lines 88 through 91, asked questions about
19 using post-2008 information, and that information
20 essentially through her cross examination was placed
21 into the record.

22 So, again, while I don't disagree on

1 the prudency determination as it relates to Company
2 decisions made at that time, we should only be
3 looking at what the Company knew at that time. Many
4 of the other parties are basing positions in this
5 case based on information that has come after the
6 close of 2008.

7 MS. SATTER: I am going to take a chance here
8 because I don't know specifically what reference you
9 are making there. I am going to take the chance that
10 it had to do with rates that were in effect in 2009.

11 MR. REICHART: I believe that may be, yes.

12 MS. SATTER: And these rates were put into
13 effect in 2009 because of actions which took place in
14 2010. But, again, I don't have the transcript before
15 me and you will have the transcript so you can see
16 for yourself.

17 The private I/I programs are an
18 interesting matter relative to post-2008 actions
19 primarily because we first heard about those programs
20 in the supplemental testimony of Mr. Kerckhove. And
21 in that supplemental testimony, and I believe it was
22 on page -- it started on page 7 and goes over into

1 page 8, they are discussed without reference to a
2 time frame. So when we first read this, we were
3 like, oh, well, when was this happening? And then as
4 it turns out, it was happening later. So as far as I
5 am concerned, you have got kind of a funny situation
6 where you have somebody talking about a program that
7 came years after the relevant facts. Then we
8 followed up on it and now it has kind of taken on a
9 life of its own. And I think that's a problem. And
10 this is kind of an example of how when things aren't
11 done properly the first time, you can go down a road.
12 So that's the only comment I want to make on that.

13 The next subject of our Motion to
14 Strike is page -- again, Exhibit 2.0 SR, and this is
15 lines 197 to 210 which is pages 9 and 10. The
16 question is, "What is the second reason?" And if you
17 look at that discussion, this is another attempt to
18 go after Mr. Streicher. Mr. Streicher has been
19 critical of the Company for its operational
20 practices. He has held up the City of Elmhurst as a
21 comparative example of a well-run system. In fact,
22 what he has said was a well-run system has done A, B

1 and C. He hasn't said City of Elmhurst.

2 For all -- he is subject to cross
3 examination. I don't know what he is going to say,
4 whether the City of Elmhurst is the best system in
5 the region or if he is going to say the City of
6 Elmhurst has problems. I don't know what he is going
7 to say. But if you go in to question his
8 credibility, then you do it on cross examination.
9 And you particularly don't use matters that were
10 raised in direct to question his credibility on
11 surrebuttal. This is the same issue that we had with
12 Mr. Kerckhove, although it is slightly different in
13 terms of what he says.

14 But the only other thing I would want
15 to point out is that Mr. Hillen specifically cites AG
16 Exhibit 1.0 on Reopening at lines 202, 204 and 207
17 and does not reference his rebuttal.

18 I can go on to the next issue. Do you
19 want to respond to that?

20 MR. REICHART: I will respond to both because I
21 think the next one is also related.

22 MS. SATTER: Okay. Now, the next section is a

1 relatively short reference, pages 12 and 13 of the
2 recent summary of events in the Village of Elmhurst.
3 For the same reasons that we maintain that
4 Mr. Kerckhove's testimony about July 2010 should be
5 stricken, this should be stricken. So it is the same
6 issue.

7 MR. REICHART: And I would have the same
8 arguments here for why those rain events are clearly
9 relevant to this case. And going through the --
10 Mr. Streicher himself, his experience, the source of
11 the information being the Elmhurst website,
12 everything else that I said before, if I could
13 just -- as Sue said, it is pretty much the same issue
14 and it is just a reference to Mr. Kerckhove's
15 testimony where we discussed that before.

16 Regarding Ms. Satter's comment on the
17 information on page 9, I do think that Mr. Streicher
18 when referring to a well-run system is referring to
19 Elmhurst or opens the door to questions about
20 Elmhurst because Elmhurst is his experience. And
21 there is a progression or a building that comes
22 through his testimony. In his direct testimony, he,

1 again, talks about the example -- the most obvious
2 example is on page 11. He talks about --

3 MS. SATTER: I am sorry, is this rebuttal?

4 MR. REICHART: This is his direct. Page 7 he
5 states in his experience a well-run system will
6 conduct inspections and repairs on a ten-year cycle.
7 He adds that Elmhurst is on a seven-year cycle. The
8 implication clearly is that Mr. Streicher believes
9 that Elmhurst is a well-run system.

10 You know, he talks about his
11 experience at Elmhurst and what we may or may not be
12 doing right as American Water or Illinois-American
13 Water in the Country Club District. He will share
14 insights based on his experience when Elmhurst has
15 faced similar issues. The tile drain issue is one,
16 management of I/I is another.

17 So simply because he doesn't
18 specifically reference Elmhurst in a particular area
19 where Mr. Hillen is responding to doesn't mean that
20 he does reference well-run systems and, therefore, I
21 believe Elmhurst is relevant.

22 And, again, he references a well-run

1 system and then gives Elmhurst as an example in
2 direct testimony on page 11. He later talks about a
3 well-run system in rebuttal testimony on page --
4 that's the one quote that both of us keep going back
5 to on the I/I -- page 6, lines 94 through 98. He
6 clearly has in mind what a well-run system is and he
7 has in the past testimony provided Elmhurst as an
8 example of a well-run system, he is from Elmhurst,
9 his experience on well-run systems would come from
10 Elmhurst. He has on several different occasions
11 throughout his testimony used his experience with
12 Elmhurst as a counterpoint or a critique of what the
13 Country Club system is doing.

14 JUDGE TAPIA: Thank you, Mr. Reichart. Ms.
15 Satter, do you have one?

16 MS. SATTER: One. I think referring to the
17 Elmhurst system in various particular issues or
18 particular facts is perfectly fair. That does not
19 equate, though, to the kind of comparison of system
20 to system that the Company seems to be implying.
21 And, in fact, Mr. Kerckhove himself says that he
22 doesn't think they are comparable. So it is kind of

1 a funny position to be maintaining that, you know, on
2 the one hand we should put whatever we want about the
3 City of Elmhurst in here as surrebuttal after my
4 witness doesn't have an opportunity to respond, and
5 then at the same time to say, well, they are really
6 not comparable. So I am not quite sure which
7 argument the Company prefers. They are putting them
8 both out there, but I don't think that that addresses
9 the question of what should be discussed in
10 surrebuttal testimony.

11 I mean, really there is a scope issue
12 here. And I think that the Company is reading into
13 Mr. Streicher's testimony. When he talks about a
14 well-run system, he has 38 years of experience in the
15 industry. Who is to say when he says a well-run
16 system, he means one system. You know, he has
17 experience. He knows what's going on in the industry
18 in general. They are reading into it. And as they
19 read into it, then they say, well, here is our
20 approach. As I said in my motion, I think this is
21 phantom testimony and they are trying to hook
22 something on that.

1 And, additionally, as Mr. Reichart
2 pointed out, Mr. Streicher left Elmhurst several
3 months ago, certainly before July of 2010. So he was
4 not present when this water incident took place. So
5 he really -- what he would even know about it is
6 questionable. He certainly has no responsibility for
7 it, and I don't think there was sufficient
8 information in the record that you would even know if
9 it was comparable to anything that happened in 2008.

10 So then the final section that we have
11 asked to strike is Mr. Hillen's testimony.

12 MR. REICHART: I'm sorry. Can I respond to
13 that last point? I apologize; I didn't mean to cut
14 your flows. But I do want to respond to that because
15 I wanted to clarify a point that Ms. Satter made.

16 She is correct that Mr. Kerckhove in
17 his testimony does indicate inherent differences
18 between the Elmhurst system and the Country Club
19 system, and I wish I could find that cite. The point
20 I wanted to make is the link to the website testimony
21 and the Elmhurst system that we are trying to make,
22 this information that is the subject of the motion to

1 strike, applies only to I/I, I/I and the Elmhurst
2 system. And it applies to I/I. We are not picking
3 and choosing when we want to use it and don't want to
4 use it. I/I is an issue that, again, going back to
5 that same cite that I keep referencing but keep
6 forgetting, I think it is page 6, where Mr. Streicher
7 talks about I/I, the weather impacts on I/I and what
8 a well-run system should be, that is the link to the
9 Elmhurst information.

10 We are not -- and I don't want to
11 leave the Judge with the impression -- we are not
12 saying that there are -- you know, there is an apples
13 to apples comparison on anything. But Mr. Streicher
14 brings up this I/I question. He brings up his I/I
15 critique. And I believe that the information
16 relevant -- or the information on Elmhurst is
17 relevant to assessing that critique. It is that
18 simple.

19 So we are not trying to throw a broad
20 net and pull all things Elmhurst into this case.
21 That is not the case at all.

22 JUDGE TAPIA: Thank you, Mr. Reichart.

1 Ms. Satter?

2 MS. SATTER: We ask to strike Mr. Hillen's
3 testimony, page 13, lines 276 to 284. And, again,
4 this is this general question how does Elmhurst
5 compare to the Company's Country Club system when
6 comparing peak day and average monthly waste water
7 flows and similar period water sales. And basically
8 he says I don't know. The answer is I don't know and
9 that he wasn't able to prepare an analysis on that.
10 He says he lacked the details of water production.
11 And I believe he attaches a data request that he
12 says, well, I don't know what to do with it.

13 It seems to me if he knows what to do
14 with it and he has a point to make or an analysis to
15 make, make it. That's what testimony is for. But to
16 throw in a data request response because he doesn't
17 know what to do with it and say, well, I don't like
18 this response, I don't know what to do with it so
19 here it is, it is inappropriate, and it is not
20 testimony. It is not probative of anything, other
21 than to say, well, we didn't like the Attorney
22 General -- responses of the Office of the Attorney

1 General. That's not evidence.

2 And now we have got a record that has
3 God knows what in it. Who knows what someone will do
4 with it after the fact because we don't really see
5 why it was put in in the first place. And so it
6 should be limited.

7 And, of course, this also goes to the
8 question of whether in rebuttal testimony
9 Mr. Streicher made this comparison, whether the
10 statement that -- whether the statement that in
11 regards to whether, you know, rain should affect I/I,
12 one would -- the statement of Mr. Streicher on page 6
13 of his rebuttal testimony, "As I have mentioned, I do
14 not expect to keep all I/I out of the sewer
15 collection system, but it should be maintained so it
16 can handle significant rain and other runoff events
17 without overloading the treatment plant with
18 extraneous water."

19 Okay. So does that -- how does that
20 compare the Company's Country Club system when
21 comparing peak daily and average monthly waste water
22 flows with similar period water sales? He is talking

1 about rain. He is talking about water that was
2 addressed in direct testimony. So, again, we are
3 going back to direct testimony and we are still not
4 saying anything about it. So this testimony is
5 incompetent and should be stricken.

6 JUDGE TAPIA: Thank you, Ms. Satter.

7 MR. REICHART: I disagree and here is why, Your
8 Honor. This DR 3.16 references specific statements
9 made by Mr. Streicher on page 3 of his testimony
10 regarding information he provided to the Company
11 showing an imbalance between water entering the
12 Country Club system and the volume being delivered to
13 the sanitary system. In response to that, that
14 statement -- and this is an appropriate question we
15 attempted to probe -- we asked for the volume of
16 water treated, purchased water by month by the City
17 of Elmhurst, including the water wheeled to
18 Illinois-American for Country Club system from
19 January 2008 through July 2010.

20 The responses that were provided
21 simply were non-responsive. They didn't provide
22 information by month. They didn't provide

1 information in the form that Mr. Hillen requested to
2 allow him to assess the statements made by Mr. Rubin
3 here -- or I am sorry, not Mr. Rubin, Mr. Streicher.
4 Let me go to the referenced testimony.

5 So we asked the right question. We
6 attempted to do an analysis and probe Mr. Streicher's
7 statement in his rebuttal testimony, and I think it
8 is fair to show we were unable to conduct the
9 analysis we wanted to, based on the response that was
10 provided.

11 MS. SATTER: Are you finished?

12 MR. REICHART: I am done, yes.

13 MS. SATTER: The point I would like to point
14 out is that this 2002 information was provided as AG
15 Exhibit 1.2 on Reopening. In other words, it was
16 attached to the direct testimony. So, again, should
17 this have been a subject that the Company wanted to
18 address, they could have addressed it on rebuttal,
19 rather than surrebuttal.

20 But be that as it may, no party is
21 obligated to maintain or no witness, surely a
22 third-party witness, is obligated to maintain

1 information in the form that somebody else wants them
2 to maintain it. They have the information that they
3 have. And if the Company was not happy with it, they
4 could have sought other sources. They could have
5 sought sources in rebuttal testimony instead of
6 waiting for surrebuttal testimony.

7 And, again, ultimately what is the
8 testimony? I didn't do an analysis. Where does that
9 get us? And where does it get you to put a data
10 request in and responses that the Company says is
11 insufficient anyway, and that they didn't file a
12 Motion to Compel on.

13 I mean, you know, we provided what we
14 had. But if they can't do an analysis, they can't do
15 an analysis. Or if they choose not to do an
16 analysis, they choose not to do an analysis. That's
17 their choice. Why clutter the record with this
18 extraneous information?

19 JUDGE TAPIA: Thank you, Ms. Satter.

20 MR. REICHART: Well, first of all, I think the
21 information is referenced in his rebuttal testimony.
22 It goes on to discuss it. So a DR about the

1 information at that time is appropriate. It's a
2 question in response to Ms. Satter's statement. It
3 wasn't as if Mr. Hillen didn't know what to do with
4 the information. There was nothing he could do with
5 the information in the form it was presented.

6 Again, going back to, you know, we
7 provided a lot of information in this case. These
8 are our DR responses. We attempted to provide
9 information, specific information requested, to every
10 question that was asked. We did not -- we did not
11 object to be anything, and we provided the
12 information to allow the other parties to conduct the
13 analysis that they felt they needed to do.

14 This kind of goes back to the
15 difficulty in dealing with Mr. Streicher as a
16 witness. Generally, in my view he makes statements
17 and then when we ask him to support those statements
18 through discovery or what not, oftentimes he does not
19 have access to information or there isn't the
20 detailed information to allow us to conduct the study
21 that we would like to do of statements he made.

22 And, you know, obviously the Company

1 is in a different position. We do have information.
2 We do provide that information. But I think this
3 kind of goes to kind of the struggle that we have had
4 in this case in responding to critiques and
5 criticisms from the AG's witness, and in my mind
6 supports the properness of allowing the Company to
7 use the information from the website and other public
8 sources when we are unable to get information similar
9 to that from the AG witness.

10 JUDGE TAPIA: Thank you, Mr. Reichart. Are we
11 done?

12 MS. SATTER: I think so.

13 JUDGE TAPIA: Thank you, Ms. Satter. Thank
14 you, Mr. Reichart.

15 I would like to say there was good
16 argument on both sides in opposition and in support
17 of this motion. I am going to issue a written,
18 thoughtful ruling resolving this Motion to Strike. I
19 will issue this ruling prior to the evidentiary
20 hearing that we all decide on what date, so that the
21 attorneys can adequately prepare for the cross.

22 So at this point in time let's look at

1 our calendars and see what date for the evidentiary
2 hearing.

3 MR. HARVEY: Your Honor, we had sort of
4 tentatively all considered the date of November 17,
5 subject to your approval. I polled the Staff
6 witnesses, or rather the industrious Ms. Sara has
7 done so, and our Staff witnesses are available on
8 that date.

9 JUDGE TAPIA: And that would be November 17?

10 MR. HARVEY: Yes, that's a Wednesday, Your
11 Honor.

12 JUDGE TAPIA: Let me ask, and actually I am
13 going to pose this question to Mr. Reichart.

14 Mr. Reichart, will you be ordering an
15 expedited transcript of this?

16 MR. REICHART: I didn't intend to. How quickly
17 are they turned around?

18 JUDGE TAPIA: And I am not suggesting that you
19 have to. If you don't, then we are going to have to
20 push the evidentiary hearing down the line simply
21 because I want to refer to this, to the transcript,
22 to rule on this motion. And I believe it takes --

1 MR. HARVEY: For two weeks.

2 JUDGE TAPIA: Yeah, it takes two weeks. So

3 that will -- let's go off the record.

4 (Whereupon there was then had an

5 off-the-record discussion.)

6 JUDGE TAPIA: Okay. We are back on the record.

7 The parties have agreed that we are going to set the

8 evidentiary hearing tentatively on December 7 at 9:30

9 a.m. If anything changes, the parties will let me

10 know and then we can change the date to accommodate

11 the witnesses, and also we can change the time if we

12 need to. And, of course, I will issue this ruling

13 sooner than later so the parties can prepare.

14 So I will continue this case. Is

15 there anything that anybody wants part of the record

16 before we close today and continue the case?

17 Ms. Satter?

18 MS. SATTER: Nothing.

19 JUDGE TAPIA: Mr. Reichart?

20 MR. REICHART: No, thank you.

21 JUDGE TAPIA: Anything from Staff?

22 MR. HARVEY: Nothing for Staff, Your Honor.

1 JUDGE TAPIA: Thank you. Then I will continue
2 this case to December 7. We will begin the
3 evidentiary hearing at 9:30 a.m.

4 (Whereupon the hearing in this
5 matter was continued until
6 December 7, 2010, at 9:30 a.m.
7 in Springfield, Illinois.)

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